

List of Major Issues for Sewer Redesign Regulations from Comments Received

12-05-06

- 1. General – In Support**
- 2. General – In Opposition**
- 3. 1 PPB Mercury Limit**
- 4. Technical Issues**

Appendix 1: List of Commenters

1. General – In Support

- Support for efforts to streamline regulations without adversely affecting the environment. Commenters: (1) (11) (14) (partially for 16)
- Applaud MassDEP’s efforts and leadership in striving to update regulations to reflect current technologies and industrial activities, implementing performance-based standards and permits by rule where feasible and appropriate (12)
- Achieves important goals: (12)
 - Protection of public health and environment
 - Clear performance standards for regulated community
 - Conserves resources by minimizing redundant regulations
 - Streamlined requirements that balance local control with DEP oversight
- Support termination of forbearance program and replacing with “permit-by-rule”.(14)
- Effectively eliminates dual local and state permits for smaller discharges and allows for approval at local level, where conditions are best understood. Streamlines permit process (14)
- Support for 1 ppb mercury standard (13)
- I/I regulations are most welcome. (15)

2. General – In Opposition

- Deeply troubled by the change from permits to certifications and permits by rule. (5) (7) (8) (17) (21 – also wants a delay in promulgation to gain more understanding)
- The proposed regulations with “permits by rule,” presumptive permits, and certifications rather than permits do not provide public participation, access to information during the permit process, and public comment opportunities. These changes from permits will also

eliminate the right to appeal to an adjudicatory hearing. Without full public participation, MassDEP cannot enforce programs protecting water quality. (7 & 5)

- Concern about loss of state oversight (15)
- Concern that MassDEP is eliminating permit requirements that might affect water quality in Massachusetts waters, and yet does not know which waters are affected by direct or indirect industrial discharges. (7)
- The federal and local oversight that MassDEP will depend on is insufficient because: (7)
 - POTWs violate their permits and do not limit all the pollutants from their industrial contributors
 - POTWs with IPPs permit only SIUs, not all the IUs that are covered under the present MassDEP regulations
 - POTWs without IPPs do not have the capacity to permit at all
 - EPA has insufficient staff to oversee Massachusetts POTWs, with only 2 staff for all of New England and no new IPPs for at least 8 years
 - Regional POTWs do not always have good control over dischargers in their member communities
 - MassDEP's own assessment found POTWs were not doing an adequate job
- Without permits for industrial sewer dischargers, how will MassDEP increase oversight of POTWs? (7)
- The proposed rules inappropriately shift the burden of requiring Infiltration/Inflow (I/I) reductions within municipalities to MWRA and away from DEP. (13)
- Make 314 CMR 7.00 consistent with 314 CMR 2.00 with regard to the permitting process and public participation (7)
 - Why doesn't MassDEP: (7)
 - Use existing delegation authority to capable POTWs (7)(15)
 - Select industrial categories amenable to periodic (not one-time) certifications, such as dry cleaners (7)
 - Retain sanitary sewer connection permits for pump station projects (7)
 - Use the existing delegation authority instead of divest of permitting? (7)
 - How will changing to permits by rule, presumptive permits, and certifications place more responsibility on dischargers than the current permit system? (15)
 - Revise the capacity permit threshold from 5% and 50,000 gpd to address POTW capacity directly (7) (13) (16) (22 please revise and explain))
 - Requiring permits only for discharges greater than 50,000 gallons per day **and** 5% of the wastewater receiving facility's permitted flow is too high. In the MWRA, only discharges greater than 20 million gallons would require a permit. Change the "and" to "or". (13) (15) (16)

Response to General Comments (1 and 2 above)

After careful consideration of the many comments received (as described above), the following changes will be made to the regulations

➤ Sewer Discharges to POTWs with US EPA-approved Pretreatment Programs

Public Hearing Draft: Any sanitary connection or extension with a capacity of 50,000 gpd AND greater than 5% of the POTW capacity would require a permit with a 45-day presumptive approval. No permit required for sanitary connections less than 15,000 gpd. A one-time certification for connections/extensions between 15,000 and 50,000 gpd. All industrial connections would have a permit by rule.

Change:

Sanitary

- New sanitary connections and industrial discharges not listed in 314 CMR 7.17(2)c equal to or greater than 50,000 gpd would require a permit [see Participation in Permitting below for a description of the permit]. (Permit would cover capacity)
- New sanitary connections and industrial discharges not listed in 314 CMR 7.17(2)c greater than 15,000 gpd but less than 50,000 gpd would be required to file a one-time certification.
- New sanitary connections and industrial discharges not listed in 314 CMR 7.17(2)c equal to or less than 15,000 gpd would not require a permit .
- New sewer extensions less than 1,000 feet in length would require a one-time certification for the construction of the extension; (connections to the extension would be subject to the above connection provisions);
- New sewer extensions equal to or greater than 1,000 feet would require a permit (connections to the extension would be subject to the above connection provisions);

Industrial

- New or existing industrial connections listed in 314 CMR 7.17(2)c equal to or greater than 50,000 gpd would require a permit, unless the POTW has been delegated by MassDEP to conduct permitting in lieu of MassDEP. (Permits would cover capacity, general and specific prohibitions, a statement that any required local permits or approvals for the sewer connection have been obtained, and any other specific conditions deemed necessary.)
- New and existing industrial connections listed in 314 CMR 7.17(2)c less than 50,000 gpd would have no change from the public hearing draft.

➤ **Delegation**

Public Hearing Draft: The regulatory provisions allowing MassDEP to delegate its permitting program to qualified POTWs was deleted.

Change: The delegation provisions will not be deleted as proposed.

➤ **Sewer Discharges to POTWs without US EPA-approved Pretreatment Programs**

Public hearing Draft: One time certification only

Change:

Sanitary

- Same as for IPPs above

Industrial

- New and existing industrial connections listed in 314 CMR 7.17(2)c equal to or greater than 25,000 gpd would require a permit. (The permits would cover capacity, general and specific prohibitions, a statement that any required local permits or approvals for the sewer connection have been obtained, and any other specific conditions deemed necessary.)
- New and existing industrial discharges listed in 314 CMR 7.17(2)c less than or equal to 25,000 gpd would require a certification every 5 years. (The certifications would cover general and specific prohibitions and a statement that any required local permits or approvals for the sewer connection have been obtained)

➤ **Sewer Discharges to POTWs with and without US EPA-approved Pretreatment Programs**

Public Hearing Draft: No toxic reporting provision

Change: New and existing industrial connections listed in 314 CMR 7.17(2)c are required to report to MassDEP, sewer authority, and their POTW discharges containing toxic materials, as designated by MassDEP, above thresholds in the following provisions:

- 33 USC Section 301
- 33 USC Section 306
- 314 CMR 3.19(20)g – *see listing at end of this document*

➤ **Public Participation in Permitting**

Public Hearing Draft: Permits were 45-day presumptive approval, with no public notice

Change: Any person required to obtain a permit as described above will submit an application on a form prescribed by the Department. The Department will make a tentative determination to issue or deny the permit. If the Department tentatively determines to issue the permit, the complete application and any special conditions imposed by the Department will serve as a draft permit. The public notice required under 314 CMR 2.06 would include the Departments tentative determination. After the conclusion of the 30-day comment and reviewing any comments received, the Department will issue or deny the permit.

➤ **Effective Dates**

Public Hearing Draft: Regulations become effective upon promulgation.

Change: Sanitary sewer revisions become effective upon promulgation. Industrial sewer revisions take effect 6 months after promulgation to allow the MassDEP time to develop new guidance and develop new procedures to accept new permit applications, certifications and notifications. Industrial sewer users needing to obtain permits or certifications have an additional 6 months to submit their applications or certifications.

3. 1 PPB Mercury Limit

- Support for 1 ppb mercury standard (13)
- Grave concerns over 1 ppb mercury standard (2) (12) (16)
- It is burdensome, without environmental benefits, and is not technically based. (1) (6) (12)
- Clarify and explain sampling procedures (11) (16) (12)
- How will MassDEP implement and enforce the 1 ppb mercury standard (7) (12) (16)

Response: In response to the comments received, the regulations will make the effective date of the 1 ppb standard May 1, 2009---one year after the mercury product labeling provision of the new mercury statute takes effect (May 1, 2008.) The regulations will also include a requirement that upon the date of promulgation industrial sewer dischargers shall evaluate possible sources of mercury in their IWW discharges and take steps to eliminate the mercury to the greatest extent feasible (without having to meet a specific standard until May 1, 2009).

The effective date provisions, while requiring industrial sewer users to take immediate steps to evaluate possible mercury sources in their discharges, will also allow time for potential mercury dischargers to obtain additional information as the result of the new mercury

product labeling provisions. The mercury standard effective date will also allow MassDEP to develop and provide guidance on sampling and other implementation issues raised by commenters.

4. Technical Issues

Inflow and Infiltration

- Infiltration/Inflow – little guidance. Sewer authority should do work – project proponent should pay a mitigation fee to local authority for the work to be done (14)
- MassDEP needs to define what constitutes “adequate” inflow and infiltration removal. (5)
- MassDEP should clarify who is responsible for reducing inflow and infiltration in the case of regional authorities that do not have direct control over all their collection systems. (13)
- I/I should be based on anticipated gallons per day of actual flow, not the Title 5 inflated flow. (14)

Response: When there are capacity issues related to collections systems caused by I/I, MassDEP will require, through either an enforcement order or an NPDES permit, the responsible party develop a plan for the identification and elimination for the removal of I/I. The identification, how the work gets accomplished, how it will be paid for and who will perform the work are pieces of that plan, developed by the municipality. Since each situation is different, the Department works with municipalities on issues such as rates of removal, what constitutes adequate removal and prioritizing where the work should focus. Since each situation is different there needs to be flexibility related to these issues.

Staffing of Fully Automated Industrial Wastewater Pretreatment System (FAIWPS)

- While this provision was created to provide flexible staffing for many pretreatment systems, the Biotechnology comments urged greater flexibility by changing the definition.

Response: MassDEP will clarify the proposed definition but not change its substance since adding the requested additional flexibility (remote staffing) could result in untreated or partially treated industrial wastewater discharges.

Elementary Neutralization

- Why is MassDEP limiting the exemption for a certified operator for neutralization operations to batches of 2 liters or less when larger batches would reduce the potential for health and safety concerns? (12)
- Why is MassDEP eliminating the flexibility provided in 310 CMR 30.000 with the proposed regulations? (12)
- MassDEP should increase the limit for exempt batches from 2 liters to 55 gallons (11) (12)

Response: MassDEP based its proposal on the recommendations of a workgroup that included representatives of the Board of Certification for Wastewater Treatment Operators, industry, consultants, and government officials. While MassDEP will go forward with the proposed provisions, it will monitor the exemption threshold to see if it warrants further attention in the future.

Definition and Regulatory Language Changes

There are several other definitions and other proposed regulatory language that will be changed in response to comments received.

Appendix 1: List of Commenters and Reference Numbers

#	<u>Comment Source</u>
1	AIM
2	Ambient Engineering
3	Capaccio Engineering
4	Harvard University #1
5	David Stoff
6	Ed Morgan
7	Environmental Groups #1
8	Environmental Groups #2
9	Harvard University #2
10	ISP Freetown Fine Chemicals
11	Mabbett & Associates
12	Massachusetts Biotechnology Council
13	MWRA
14	NAIOP
15	Riverways Program, DFWL
16	Roger Frymire
17	Steve Pearlman
18	Susan Smitts of MA Biotechnology Council & Mabbett & Associates
19	Town of Acton
20	USEPA
21	Water Supply Citizens Advisory Committee
22	Irwin Engineering

1. 314 CMR 3.19(20)g
2. 33 USC Section 301
3. 33 USC Section 306

314CMR3.19(20)(g) provisions:

1. That any activity has occurred or will occur which would result in the discharge of any toxic pollutant listed in 314 CMR3.17 which is not limited in the permit, if that discharge will exceed the highest of the following notification levels:

- a. 100 micrograms per liter (100 ug/l);
- b. 200 micrograms per liter (200 ug/l) for acrolein and acrylonitrile; 500 micrograms per liter (500 ug/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
- c. Five times the maximum concentration value reported for that pollutant in the permit application; or

2. That they have begun or expect to begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the permit application.

3.17: Appendix B - Toxic Pollutants List

(1) Organic Toxic Pollutants in Each of Four Fractions in Analysis by Gas

Chromatography/Mass Spectroscopy (GC/MS).

(a) Volatiles.

1V acrolein	13V dichlorodifluoromethane
2V acrylonitrile	14V 1,1-dichloroethane
3V benzene	15V 1,2-dichloroethane
4V bis (chloromethyl) ether	16V 1,1-dichloroethylene
5V bromoform	17V 1,2-dichloropropane
6V carbon tetrachloride	18V 1,2-dichloropropylene
7V chlorobenzene	19V ethylbenzene
8V chlorodibromomethane	20V methyl bromide
9V chloroethane	21V methyl chloride
10V 2-chloroethylvinyl ether	22V methylene chloride
11V chloroform	23V 1,1,2,2-tetrachloroethane
12V dichlorobromomethane	24V tetrachloroethylene
